

**Sisk, Richard**

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**From:** Richard Sisk <Sisk.Richard@epamail.epa.gov>  
**Sent:** Monday, September 22, 2014 11:52 AM  
**To:** Sisk, Richard  
**Subject:** Fw: Possible course of action @ VB/I-70 - OU-01  
**Attachments:** Potential Course of Action @ OU-01.xlsx

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----- Forwarded by Richard Sisk/R8/USEPA/US on 09/22/2014 11:52 AM -----

From: Paula Schmittiel/R8/USEPA/US  
To: "Jennifer Chergo" <chergo.jennifer@epa.gov>, sisk.richard@epa.gov  
Cc: John Works/R8/USEPA/US@EPA  
Date: 10/04/2012 03:08 PM  
Subject: Possible course of action @ VB/I-70 - OU-01

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Jennifer & Richard - Attached is a draft matrix (spreadsheet) of the possible courses of action that have been discussed for the non-responsive POs at OU-01. Yesterday at our meeting, we seemed to have several different scenarios with multiple property types. This might make the discussion with the City easier to stay on track. Please review and let me know if you have any comments by 9:00 AM Tuesday AM - I'm out tomorrow and Monday is a holiday.

Thanks

Paula Schmittiel  
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*(See attached file: Potential Course of Action @ OU-01.xlsx)*

**POTENTIAL COURSES of ACTION  
VB/I-70 SUPERFUND SITE - OU-01**

<b>PROPERTY STATUS</b>	<b>POSSIBLE COURSE of ACTION</b>	<b>DESCRIPTION</b>	<b>POTENTIAL CONSEQUENCES</b> (All of these proposed options w/the exception of issuing an order will require EPA to issue an ESD prior to implementation of any action).
Rental Property- no sampling	Issue Order for Access to sample and/or cleanup	EPA would use its enforcement authority and issue an administrative order to gain access for sampling and cleanup	<ul style="list-style-type: none"> <li>• State opposes orders for individual POs.</li> <li>• Potential for action being opposed by public is minimal.</li> <li>• Would protect tenants since they have little recourse w/PO if they learn property is contaminated after signing lease.</li> </ul>
Rental Property- no sampling	Send annual letter to both PO and to tenant*	Letter would notify of the risk, lack of sampling & provide information about where to learn more to protect children from exposure.	<ul style="list-style-type: none"> <li>• Letter may not notify tenant prior to signing lease.</li> <li>• Does not require PO to communicate anything to either tenant or potential buyer prior to signing lease or purchase.</li> </ul>
Rental Property- w/known contamination	Send annual letter to both PO and to tenant	Letter would notify of the risk, lack of sampling & provide information about where to learn more to protect children from exposure.	<ul style="list-style-type: none"> <li>• Letter may not notify tenant prior to signing lease.</li> <li>• Does not require PO to communicate anything to tenant. Colorado law requires PO to communicate to potential buyer prior to purchase the presence of contamination but it puts the burden on the new owner to take recourse of action if they learn about it. Q - is there a SOL for new owner to take recourse?</li> </ul>
Rental Property- w/known contamination	File Notice of Environmental Conditions	Notice filed w/CCOD property records alerting new POs of the presence of contamination. Colorado law provides PO w/opportunity to contest filing.	<ul style="list-style-type: none"> <li>• Could have long term consequences on property value of property &amp; maybe even of adjoining properties.</li> <li>• Existence of Notice may not come to a potential buyer's attention until closing.</li> <li>• Could arrange to have CCOD notify State when a construction permit is pulled.</li> </ul>
Rental Property- w/known contamination	Letter to PO to sign AA or a Notice would be filed	Letter would give POs a choice to sign AA to allow sampling & if necessary cleanup or a Notice of Environmental Conditions would be filed on property. Letter would remind PO of the requirement under Colorado Law to notify potential buy of known contamination. THE TIMING on THIS WOULD BE CRITICAL to ALLOW EPA ADEQUATE TIME TO SAMPLING & CLEANUP BEFORE DEMOLIZATION NEXT SUMMER.	<ul style="list-style-type: none"> <li>• This option would give POs a choice &amp; would allow them to "due process" under Colorado law for the filing of the Notice of Environmental Conditions.</li> <li>• The timing to contest the Notice may not give the PO the opportunity to reconsider signing the AA if they fail in their appeal on the Notice.</li> <li>• This option exerts the maximum leverage on the PO to give access without EPA issuing an order.</li> </ul>

**POTENTIAL COURSES of ACTION  
VB/I-70 SUPERFUND SITE - OU-01**

PROPERTY STATUS	POSSIBLE COURSE of ACTION	DESCRIPTION	POTENTIAL CONSEQUENCES (All of these proposed options w/the exception of issuing an order will require EPA to issue an ESD prior to implementation of any action).
Owner-Occupied Property- no sampling	Annual letter to PO*	The letter would notify the PO that the property has not been sampled to determine if there is a potential risk if contamination but that the property is within the boundaries of a Superfund Site. Letter would also provide information as to where additional information to protect oneself against potential risk.	<ul style="list-style-type: none"> <li>•The biggest drawback to an annual letter for this category of properties is that the property could easily change to a rental and it may take several years for EPA and the State to determine that there is a tenant who has not been informed of the situation.</li> </ul>
Owner- Occupied Properties- known contamination	Letter to PO to sign AA or a Notice would be filed	Letter would give POs a choice to sign AA to allow sampling & if necessary cleanup or a Notice of Environmental Conditions would be filed on property. Letter would remind PO of the requirement under Colorado Law to notify potential buy of known contamination. THE TIMING on THIS WOULD BE CRITICAL to ALLOW EPA ADEQUATE TIME TO SAMPLING & CLEANUP BEFORE DEMOLIZATION NEXT SUMMER.	<ul style="list-style-type: none"> <li>•This option would give POs a choice &amp; would allow them to "due process" under Colorado law for the filing of the Notice of Environmental Conditions.</li> <li>• The timing to contest the Notice may not give the PO the opportunity to reconsider signing the AA if they fail in their appeal on the Notice.</li> <li>• This option exerts the maximum leverage on the PO to give access without EPA issuing an order.</li> </ul>